

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

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**ROCK ISLAND DEMOCRATIC CENTRAL COMMITTEE and JOHN G GIANULIS,
as Treasurer**

**MEMORANDUM OF ROCK ISLAND DEMOCRATIC CENTRAL COMMITTEE IN
RESPONSE TO THE GENERAL COUNSEL'S PROBABLE CAUSE
RECOMMENDATION**

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INTRODUCTION

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In this matter, the Office of the General Counsel is waging an attack on local party committee activity that will devastate grassroots-level political activity nationwide. The General Counsel has made a string of allegations against a small local party committee that operated in good faith and, unbeknownst to it, made a small mistake that has landed it in the middle of a large enforcement action with the Commission. As no real harm was done in this case and most of the issues here are moot, the Commission should heed its long-standing commitment to encouraging grassroots political activity and dismiss this action.

STATEMENT OF FACTS

The Rock Island Democratic Central Committee ("Rock Island Committee") is a local party committee operating in Rock Island County, Illinois, which is located in the Seventeenth Congressional District in Illinois. In the 1998 and 2000 election cycles, it carried out get-out-the-vote activity and other party activity in support of all Democratic candidates in the Seventeenth District. (See, e.g., Gianulis Deposition at 104, Nelson Deposition at 126.) In addition, as a local party committee is permitted to do under federal law, the Rock Island Committee paid for advertisements expressly advocating Congressman Lane Evans, the Congressman who represented Rock Island County.

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The Rock Island Committee carries out some of its activity through a subcommittee, often referred to as the Rock Island County GOTV Committee ("GOTV Committee") (Engholm Deposition at 145) The GOTV Committee has as its members many candidates—local, state, and federal—who make contributions or solicit contributions for it (Engholm Deposition at 149) During the 1998 and 2000 election cycles, the GOTV Committee held regular meetings at which it planned and executed the Rock Island Committee's voter registration and GOTV activities (Nelson Deposition at 127, Engholm Deposition at 145-46)

ARGUMENT

I. THE GENERAL COUNSEL'S BRIEF FAILS TO SHOW THAT THE ROCK ISLAND COMMITTEE MADE EXCESSIVE, IN-KIND CONTRIBUTIONS TO FRIENDS OF LANE EVANS.

The General Counsel alleges that the Rock Island Committee made excessive in-kind contributions to Friends of Lane Evans This allegation is based on the General Counsel's unsupported claim that the Rock Island Committee coordinated certain expenditures expressly advocating the election of Congressman Evans with Friends of Lane Evans However, as the Commission does not—indeed can not—cite any particular communications that were the product of actual coordination between Friends of Lane Evans and the Rock Island Committee, it fails to show that these expenditures should have been treated as contributions under the Federal Election Campaign Act (the "Act")

Under the Act, expenditures made "in cooperation, consultation, or concert, with or at the request or suggestion of, a candidate, his authorized political committee, or their agents" are considered contributions to the benefiting candidate and are subject to the applicable

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contribution limits 2 U S C § 441a(a)(7)(B)(i) (2003). The Supreme Court has made clear that the General Counsel may not presume that a party's expenditures in support of its candidates are coordinated as a matter of law Colo Republican Fed Campaign Comm v Fed Election Comm'n, 518 U S 604, 619 (1996). Accordingly, to allege coordination, the General Counsel must show evidence that the Rock Island Committee actually cooperated or consulted with Friends of Lane Evans about the specific expenditures the General Counsel claims were coordinated

In addition, First Amendment principles require the General Counsel to make a factual inquiry as to each individual communication at issue See Fed Election Comm'n v Christian Coalition, 52 F Supp 2d 45, 92 (D D C 1999) Generalizations or observations about the relationship between Friends of Lane Evans and the Rock Island Committee are insufficient to support an allegation of coordination

The General Counsel's argument that the Rock Island Committee made coordinated expenditures in support of Friends of Lane Evans fails, as it is not able to show that Eric Nelson, the campaign manager of Friends of Lane Evans, or any other representative of the campaign, had substantial discussions with the Rock Island Committee about, or controlled the content of, any particular direct mail piece, radio advertisement, newspaper advertisement, or any other expenditure sufficient to meet the required legal standard Fed Election Comm'n v Christian Coalition, 52 F Supp 2d at 92 (See, e.g., Gianulis Deposition at 133-34) It instead relies on nonspecific allegations concerning the structure of the Rock Island Committee and the relationship between the Rock Island Committee and Mr Nelson to

support its allegation of coordination (General Counsel Br at 6, Nelson Deposition at 135)

This is insufficient under the law, and may not sustain an allegation of coordination

In the absence of legally-sufficient evidence of coordination as to specific communications, the General Counsel presumes four of the Rock Island Committee's expenditures were coordinated based upon the structure and functions of the Rock Island Committee. The General Counsel bases its presumption that coordination occurred with respect to these specific expenditures on the fact that Mr. Nelson attended meetings of the GOTV Committee at which the Rock Island Committee's communications were sometimes discussed (General Counsel Br at 6, Nelson Deposition at 135). However, the General Counsel does not offer evidence to suggest that Mr. Nelson, or any other representative of Friends of Lane Evans, actually had control over the content of any of these four communications sufficient to satisfy the legal standard established in Christian Coalition. See Fed Election Comm'n v Christian Coalition, 52 F. Supp. 2d at 92.

Moreover, the General Counsel draws conclusions from Mr. Nelson's testimony about the Rock Island Committee's activities that the evidence does not support. For example, the General Counsel states that "Mr. Nelson acknowledged that he specifically requested that Rep. Evans be featured in direct mail pieces produced and distributed by the GOTV Committee" (General Counsel Br at 6). However, Mr. Nelson's testimony does not support this assertion; Mr. Nelson testified only that he generally believed that it was important for Congressman Evans's name to appear on direct mail put out by the Rock Island Committee, and that, as Congressman Evans was a member of the GOTV Committee, his name often did appear on Rock Island Committee mailings along with other members of the GOTV

Committee. (Nelson Deposition at 129, 137) He did not testify, as the General Counsel states, that Mr Nelson had requested Congressman Evans to be "featured" in Rock Island Committee communications

The General Counsel ignores testimony developed in this case that directly contradicts its theory. Ms Engholm, a frequent attendee at meetings held by the GOTV Committee, testified as follows

Questioner With direct mail at the Rock Island GOTV Committee meetings, were representatives at the meetings able to review direct mail pieces before they went out?

Ms Engholm I think ideas were discussed I don't necessarily know that anybody saw the pieces until they were ready to be mailed

(Engholm Deposition at 147-48.)

As the General Counsel can not show that the Rock Island Committee coordinated a single one of the relevant expenditures with Friends of Lane Evans, the Commission should dismiss this matter

II. IN LIGHT OF THE INSIGNIFICANCE OF THE ROCK ISLAND COMMITTEE'S ERRORS, THE COMMISSION SHOULD NOT WASTE ITS RESOURCES ON THIS MATTER.

The Rock Island Committee has conceded that it undertook some activity in 1998 that constituted "expenditures" under the Act and that it should have registered as a federal political committee (Rock Island Response to Commission's Reason to Believe Finding, Dec 23, 2003, at 3) The Rock Island Committee was, and still is, a relatively unsophisticated party committee operating at the local level, and it simply did not know that the activities it was carrying out subjected it to federal regulation These mistakes amounted to minor

reporting errors that resulted in no actual harm, as all of the Rock Island Committee's activities were disclosed on its reports to the State of Illinois ¹ However, the General Counsel's argument in this matter leads it to conclude that the Rock Island Committee accepted an unspecified amount of money in prohibited and excessive contributions (General Counsel Br at 14-16)

Punishing the Rock Island Committee in this case for what was essentially an accounting error—failing to segregate its federal funds into a separate account--would be disproportionate to its mistakes and would serve no real purpose As the Rock Island Committee has made clear, it did not know it was violating the law, and did not intend to do so All of its activities were disclosed on its reports to the State of Illinois, and it believed that that was sufficient

In addition, while the Rock Island Committee acknowledges it surpassed the \$1,000 expenditure threshold in the 1998 election cycle, it did not do so in the 2000 election cycle and has not done so in any election cycle since The General Counsel does not allege otherwise—in fact, all four of the expenditures the General Counsel cites were made in the 1998 election cycle The Rock Island Committee's mistakes in this matter were confined to

¹ In a footnote, the General Counsel claims that the Rock Island Committee has been "less than forthcoming" with information regarding its bank accounts, and accuses the Rock Island Committee of defying the Commission's subpoena. (General Counsel Br at 16 n 9) The Rock Island Committee disagrees with the General Counsel's assessment of the matter, and respectfully refers the Commission to its previous discovery request responses for evidence of its cooperation As the General Counsel is well aware, despite suffering through health problems during the course of this investigation (see Gianulis Deposition at 162-64), John Gianulis, the Rock Island Committee's chairman and treasurer, has done his best to comply with the Commission's discovery requests The Rock Island Committee

one election cycle, and it has ensured that similar mistakes have not occurred since The Commission should not penalize the Rock Island Committee by including all of its contributions for the 1998 and 2000 election cycles in its penalty calculation

This case will have no deterrent effect on other local party committees, as the law has changed significantly since the events at issue here Current law, with passage of the Bipartisan Campaign Reform Act, subjects local party committee activity to significantly increased regulation, and the Rock Island Committee's activities could not be duplicated under the current legal regime See, e.g., 2 U S C § 441i(B) The Commission should not spend its resources on such an action, and should dismiss this matter

III. REFUSING TO DISMISS THIS CASE WOULD CHILL LOCAL PARTY COMMITTEE ACTIVITY NATIONWIDE.

Should the General Counsel's arguments prevail here, it would destroy the relationship between local party committees and federal candidates—a relationship that Congress and the Commission have both long revered as a crucial element of our two-party system When Congress raised the registration and reporting threshold for local political party committees in 1979, it did so in part to reinforce the position of local party committees within the political system See S Rep No 96-319, at 2 (1979) (“An equally important objective of the bill is to encourage grassroots participation in the political process Several provisions in the bill are directed at enhancing and enlarging the scope of political party activity, as one means to encourage individual participation”)

continues to review its documents and will further supplement its responses should it find additional documents responsive to the Commission's requests

Increased and active federal regulation of local party activity has a devastating chilling effect on local party committee activity. As one prominent party official testified at the Senate Committee on Rules and Administration's hearings on the 1979 amendments:

It has been our experience that local political party committees have become reluctant to engage in Federal-election related activity. They generally do not have legal and accounting assistance available, and local committees, therefore, have chosen not to run the risks of Federal regulation.

This, in turn, leads to less party identification with the candidate, and all of the evils that that creates

Hearing Before the Senate Comm on Rules and Administration, 96th Cong 34 (1979)
(statement of Morley Winograd, President, Association of State Democratic Chairpersons)

The Commission should not use its enforcement procedures in a case with no precedential value to undermine grassroots political activity. To do so runs counter to Commission precedent and to congressional intent. Accordingly, the Commission should dismiss this action.

CONCLUSION

The General Counsel is not able to show that the Rock Island Committee made excessive contributions in-kind to Friends of Lane Evans. The General Counsel fails to show, as the law requires, any instances in which Friends of Lane Evans or any of its agents actually had substantial discussions with any members or employees of the Rock Island Committee about any particular expenditure or controlled the contents of any particular expenditure. It simply has no evidence to support its allegations.

As to the Rock Island Committee's failure to register and report as a federal political committee, the Rock Island Committee concedes that it was in error. However, the Rock Island Committee has learned from its mistakes and has, since these violations were brought to its attention, made sure that these errors have not happened again. Changes in the law have ensured that local party committees can no longer carry out the same activities as the Rock Island Committee did here.

Accordingly, the Commission should decline to spend its resources on such a matter, and should dismiss this action.



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